

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

FROM: SCOTT WOODBURY

DATE: FEBRUARY 13, 2003

**RE: CASE NO. AVU-E-02-8 (Avista)
POTLATCH COMPLAINT**

COMPLAINT

On December 24, 2002, Potlatch Corporation (Potlatch) filed a Complaint with the Idaho Public Utilities Commission alleging that Avista Corporation dba Avista Utilities has failed and refused, and continues to fail and refuse, to purchase the cogeneration output of Potlatch's qualifying facilities (QFs) at its Lewiston facility. Reference Public Utility Regulatory Policies Act of 1978 (PURPA).

Potlatch is a forest products company that operates wood pulp, paper board, tissue and wood products manufacturing plants at Lewiston, Idaho. Potlatch states that it owns and operates four separate qualifying facilities at its Lewiston facility capable of generating approximately 95 MW of energy. From 1991 through December 31, 2001, Potlatch sold the electric energy produced by its QFs to Avista pursuant to the provisions of an Electric Service and Purchase Agreement between Potlatch and Avista dated January 3, 1991. Reference Case No. WWP-E-91-05, Order No. 23858.

On October 2, 2001, Potlatch contends that it filed with Avista, in the manner required by applicable Commission Orders, its written request for a firm quote for Avista's purchase of its qualified facility's generation after the expiration of the 1991 Agreement. The parties have been unable to negotiate a PURPA contract. The meetings between the parties, Potlatch contends, have served only to establish the fact that Potlatch and Avista have fundamental and irreconcilable differences that will not be resolved through further negotiations.

Potlatch contends that Avista has failed and refused to offer Potlatch a PURPA contract that complies with PURPA's requirements and this Commission's Orders. Specifically, it states, the purchase power rates proposed by Avista are well below Avista's avoided costs as defined in 18 C.F.R. § 292.101 and the Commission's Order establishing a methodology for avoided cost rate negotiations for QFs larger than 1 MW. In addition, Potlatch contends that Avista is attempting to impose unreasonable contract terms and conditions as a prerequisite to any purchase from Potlatch.

ANSWER

On January 27, 2003, Avista filed an Answer, affirmative defense, and Request for Deferral of Hearing. Avista contends that Potlatch has never unconditionally offered a quantity of power to Avista that it desired to supply, the period of time that it desired to supply such power or the non price-related features of the contract that it desired. Avista contends that Potlatch has not been "ready, willing, and able" to enter into a contract for the sale of power that sets forth specific obligations of the parties and that conforms with the requirements of the Commission.

REQUEST FOR DEFERRAL OF HEARING

Avista requests that the Commission defer any action on the Complaint for a period of 90 days and encourage the parties to engage in further settlement discussions, with Staff's active participation. In support of its request, Avista submits that there have been no substantive communications for nearly a year respecting the possible sale of power by Potlatch to Avista. Furthermore, Avista contends that wholesale market conditions have changed subsequent to the last discussion, which may improve the opportunity for Avista and Potlatch to reach agreement on a sale of power from the Lewiston facility. If the Commission defers action upon the Complaint, Avista states that it will endeavor to initiate settlement discussions with Potlatch for the purpose of attempting to resolve disputed matters without the necessity of hearing. Avista notes that it has requested the participation of the Commission Staff to help facilitate settlement discussions, and Commission Staff has agreed to participate.

On February 7, 2003, Potlatch filed a response to Avista's Request for Deferral of Hearing. Potlatch opposes Avista's request. Potlatch contends that despite roughly two years of off and on negotiations, the parties have been unable to come to any type of meeting of the minds regarding the sale of Potlatch's cogeneration to Avista. Without debating the merits of its

case, Potlatch contends that all of Avista's purchase proposals essentially amount to little more than an offer to purchase Potlatch's output at short-term market prices. This Potlatch contends, is unacceptable. Potlatch concludes that the parties are at an impasse that can only be resolved by a Commission decision.

With respect to Avista's argument that proceedings should be continued to allow further negotiations in the light of recent conditions, Potlatch states that it is always willing to entertain a legitimate and reasonable proposal. The suggestion that such a proposal might be forthcoming is not, however, Potlatch contends, a reasonable ground for delaying these proceedings. If Avista has a new proposal to make to Potlatch, Potlatch contends that it should submit it in writing and Potlatch will respond in good faith. In the meantime, Potlatch contends that there is no reasonable basis for delaying these proceedings.

Commission Decision

Potlatch has filed a PURPA complaint against Avista regarding the cogeneration output of its Lewiston facility. The attorney for Potlatch requests a scheduling Order for discovery, testimony prefile and hearing. Staff intends to contact counsel for both Avista and Potlatch to develop a schedule that is mutually agreeable. Does the Commission concur with the proposed procedure for processing this case?

Scott Woodbury

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